

**REMARKS/ARGUMENTS**

Favorable reconsideration of this application is respectfully requested.

Claims 1-12 are pending in this application. Claims 1-12 have been amended to better conform to accepted U.S. claim practice and better reflect the system and base station operation as shown relative to FIGS. 2-4 and FIGS. 5-7, for example. Thus, the claim amendments include no new matter.

The outstanding Office Action presents a rejection of Claims 1, 3-5, 7-9, 11, and 12 under 35 U.S.C. §103(a) as being unpatentable over Gandhi et al. (U.S. Patent No. 6,944,449, Gandhi) in view of Khaleghi et al. (U.S. Patent No. 6,975,609, Khaleghi) and a rejection of Claims 2, 6, and 10 under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi and in further view of Peisa et al. (U.S. Patent No. 6,850,540, Peisa).

Before addressing the outstanding prior art rejections, it is believed that a brief summary of the invention would be helpful. In this regard, exemplary method Claim 1 sets forth a call acceptance control method in a mobile communication system handling packet users who produce packet calls using a packet switching system and other users who use a circuit switching system for their calls. Both kinds of users are connected with shared wireless resources and calls are made using multiple access and the shared resources. A resource use condition is measured that arises because of existing user connections of both types. Acceptance of new calls for connection is restricted when a measured value of the resource use condition exceeds a set call acceptance threshold value.

As explained in the paragraph bridging pages 5 and 6 of the specification, for example, the two different types of switching systems described above are different as to the amount of resource use. In the case of the circuit switching system, fluctuation as to resources used is comparatively small. On the other hand, the fluctuation is large relative to a packet switching system, due to the burst character of this system. Consequently, in a mobile

communication system in which both a circuit switching system and a packet switching system are present, it is not possible to achieve a sufficient guarantee of communication quality in terms of only controlling acceptance of new calls by setting a static call acceptance threshold value.

In the present invention, a correction value is calculated in accordance with the number of actively connected packet users of the said packet switching system and the restriction of new call acceptance is made dynamically based on adjustments made in accordance with the correction value. Thus, as explained at page 17, lines 14-17 of the specification, for example, the calculation of the correction value from the number of packet users connected by the packet switching system by transmitting/receiving section is important to the present method Claim 1, as well as to the system Claim 5 and base station Claim 9.

The outstanding Action acknowledges that Gandhi is not concerned with calculating a correction value as to the subject matter of Claims 1, 5, and 9 at page 3 of the outstanding Action.

In addition, Applicants note that the concern in Gandhi is a threshold determined by a measured reverse link indicator prior to any access connection. Thus, access connections are based on a blocking threshold value that is based on the measured reverse link indicator, not on any number of users that are connected. See FIG. 2, step S12, for example.

In another species, Gandhi suggests a different approach involving blocking thresholds associated with station loading levels as explained at col. 5, line 59-col. 6, line 59. Again, measured loading levels do not suggest that existing connected numbers of users are the concern.

Moreover, while FIGS. 4 and 5 of Gandhi suggest reverse channel frame error rate monitoring and dropped call monitoring to compare to nominal values to determine if a blocking threshold is to be temporarily altered, not any calculating of a correction value in

accordance with a number users.

Instead of any reverse link threshold criteria or blocking thresholds associated with station loading levels, the concern in Khaleghi is that there are both voice and data users which require different power reserves and that AVE in terms of total traffic expressed in terms of equivalent voice users is needed. See col. 6, lines 59-67. The Khaleghi approach is to calculate powers for voice and data callers and then dynamically allocate resources between these voice and data users as further explained at col. 8, lines 25-31. Thus, the admission of a new voice user depends on residual resources that would remain for data users after grant of access as explained at col. 8, lines 55- 61. Similarly, granting data call access is explained at col. 9, lines 36-38, as being “based on the residual ‘reserved’ power of data calls rather than the actual power consumed by data calls.”

Clearly, the teachings of Gandhi and those of Khaleghi are not compatible and nothing in either reference suggests the disparate teachings of these references should be combined. There is no rational motivation<sup>1</sup> present as to these references that remotely suggests that their teachings be combined and even if combined, neither teaches the claimed subject matter requiring the calculating of a correction value in accordance with a number of actively connected packet users. To establish a *prima facie* case of obviousness, the references must at least teach all claim limitations when combined. See MPEP § 2143.03.

Moreover, any properly established *prima facie* case of obviousness cannot be based on reference modifications that will require a “substantial reconstruction and redesign of the elements shown in [the primary reference] as well as a change in the basic principle under which the [primary reference] construction was designed to operate.” See *In re Ratti*, 270 F.2d 810, 813, 123 USPQ 349, 352 (CCPA 1959). This prohibited “substantial

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<sup>1</sup> See *In re Kahn*, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) noting that “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.”

reconstruction and redesign of the elements shown in Gandhi as well as a change in the basic principle under which the Gandhi construction was designed to operate is exactly what is required if Gandhi is to be modified in accordance with Khaleghi.

Accordingly the rejection of Claim 1 under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi is traversed for all the above noted reason. Similarly, as independent system and device Claims 5 and 9 essentially parallel the limitations of independent method Claim 1, the rejection of Claims 5 and 9 under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi is also traversed for all the above noted reasons.

Moreover, as Claims 3, 4, 7, 8 and 12 each depend from a respective one of these independent Claims 1, 5, and 9, the rejection of these dependent claims is traversed for the same reasons as the corresponding independent claim. In addition, each of these claims adds further features not taught by these references and the rejection thereof is traversed for this reason as well.

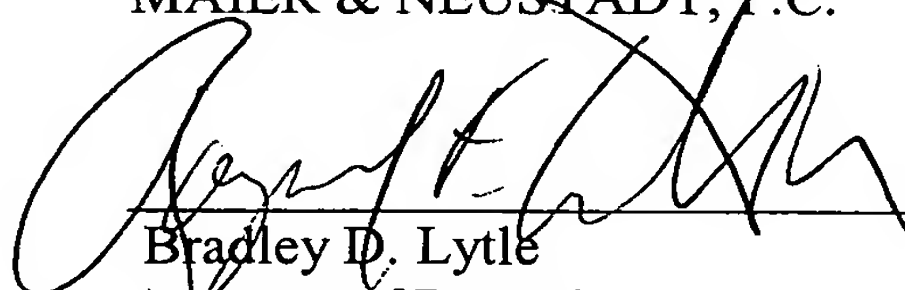
With further regard to the rejection of Claims 2, 6, and 10 under 35 U.S.C. §103(a) as being unpatentable over Gandhi in view of Khaleghi and in further view of Peisa, it is noted that Peisa does not cure the above noted defects of Gandhi and Khaleghi. Accordingly, as these dependent claims each depend from a respective one of the independent Claims 1, 5, and 9, the rejection of these dependent claims is traversed for the same reasons as the corresponding independent claim. In addition, each of these claims adds further features not taught by these references and the rejection thereof is traversed for this reason as well.

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As no other issues are believed to remain outstanding relative to this application, it is believed to be clear that this application is in condition for formal allowance and an early and favorable action to this effect is, therefore, respectfully requested.

Respectfully submitted,

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